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Real Estate Law Review: Creating a Local Environmental Law Program

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Zoning and Land Use Planning

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Creating a Local Environmental Law Program

Local governments are adopting with increasing frequency local laws to facilitate low-impact development, ensure the construction of green buildings, and coordinate land use and transportation planning to lower greenhouse gas emissions. This builds on their progress over the past two decades in adopting an impressive number of local laws to protect natural resources. These include ordinances designed to protect trees, stands of timber, hillsides, viewsheds, ridgelines, stream beds, wetlands, watersheds, aquifers and water bodies, and wildlife habitat. At the same time, provisions designed to protect environmental features from the adverse impacts of development have been added to basic land use documents such as comprehensive plans and zoning ordinances. Traditional land use regulations, such as those governing subdivisions, cluster developments, and site plans, are being amended with environmental protection in mind.

Local governments have been given a key, if not the principal, role in land use regulation. Local governments may adopt zoning ordinances and maps that provide for the future development of their communities. Comprehensive zoning began as a mechanism for protecting public health and safety by separating incompatible land uses from one another. In its application, zoning became design-oriented, focusing on the layout of streets and highways, the location of public buildings, the ability of fire trucks and firefighters to reach and fight fires, size and bulk requirements that protect property values, and the infrastruc-

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ture connections that create a workable community.

Subdivision and site plan regulations emerged to complement zoning and to help localities implement their physical plans. Such regulations initially concentrated on the creation of safe intersections, the fluid movement of vehicles, the siting of buildings, the prevention of off-site impacts such as flooding, and the adequacy of road width, curbs, and sidewalks. In their inception, regulatory tools such as subdivision and site plan regulation were not designed to protect natural resources from degradation.

Beginning in the 1960s, some communities used large-lot zoning as a crude way to protect open space and its associated natural resources. Upzoning occurred in some suburban areas and was aimed principally at controlling population growth, maintaining residential property values, and containing the cost to the community of servicing development. Incidentally, it also limited water use, aquifer contamination, and nonpoint source pollution. As the environmental movement evolved and matured in the 1970s and 1980s, local lawmakers became increasingly sensitive to environmental issues. The National Flood Insurance Program was an early influence that facilitated the adoption of local environmental law. It required local governments to adopt and enforce floodplain management programs as a prerequisite to property owner eligibility for flood insurance and local eligibility for national flood disaster assistance payments. Catastrophes had their role in the movement. Hurricanes, for example, led to stormwater management regulations and stringent setback requirements along the coasts of barrier islands that are particularly vulnerable to tropical storm damage. The 1990s saw the advent of more focused local environmental laws, and these, in the aggregate, now constitute a significant body of practice.

The gradual evolution toward environmental sensitivity in local land use controls has proceeded far enough that a distinct environmental ethic, as opposed to an incidental one, is evident. Local governments have adopted a host of environmental regulations. Local laws with the following titles can now be found and studied: cluster subdivision, environmen-

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tally sensitive area protection, erosion and sedimentation control, filling and grading, floodplains control, groundwater/aquifer resource protection, landscaping, mining and excavation, ridgeline protection, scenic resource protection, soil removal, solid waste disposal, stream and watercourse protection, steep slopes, stormwater management, timber harvesting, tree protection, vegetation removal, and wetlands.

These local environmental laws are implicated when developers propose projects to local administrative bodies charged with reviewing development proposals. Traditionally, local bodies such as planning boards review development proposals to determine whether they comply with the provisions of zoning ordinances and subdivision and site plan regulations.

Local Environmental Law Program

The nation's experiment with local environmental law has proceeded far enough that is possible to observe and describe what local governments can and should do to adopt a program to protect local environmental features and functions. Based on an examination of the adoption of local environmental laws by a large number of localities, this article describes ten steps that municipal leaders take to create an economically, politically, and legally feasible program. These steps are as follows:

1. Form a Citizens Task Force

The local legislative body should begin the development of its local environmental law program by appointing and charging a task force made up of environmentalists, developers, landowners, and other stakeholders, including representatives of the local planning board, environmental advisory board, if one exists, and other concerned citizens. The task force needs as members those who possess all relevant areas of expertise concerning environmental resources in the community, threats to those resources, the ownership and economics of affected lands, and techniques that can be used to protect critical natural resources. Its tasks should be to help the local professional staff develop an open space inventory and to secure citizen support for the local environmental law program.

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2. Conduct a Open Space Inventory

The locality and its task force should conduct a survey of all open space in the community. Open space is associated in the public's mind with community character and quality of life. It provides visual relief in developed communities and a reminder of the history of less developed and rural places. Open space, however, includes land that is used intensely for agricultural purposes and land that is zoned and taxed for residential and commercial purposes. Each parcel of ''open space'' has its own story: some, such as wetlands and watersheds, provide critical environmental services, others provide lesser environmental benefits, and some are simply undeveloped. An inventory of open space provides an opportunity for the community to list undeveloped land but also to assess the environmental importance of key parcels. From this, the task force can assess which undeveloped parcels should be acquired by the public, which should be more heavily regulated to provide low impact development, and which should be left to be developed by the private market under existing, or even more liberal, zoning.

3. Create a Greenprint

Conservation biologists report that it is the fragmentation of open lands that causes the most environmental damage. Even large lot, single-family zoning and cluster developments require roads, curbs, and infrastructure development and permit fencing and other barriers to the flow of water and the movement of terrestrial life across the landscape. Environmental planners recommend that open space be analyzed to determine how large sections of land can be preserved by avoiding fragmentation; they suggest that the community look for environmental connections among remaining open parcels and decide how to create a greenprint for the future development of the community that preserves the integrity of unfragmented natural resources to the extent that this is still possible.

Part of greenprint planning is an assessment of public health and safety risks. Where does the community's drinking water come from and are those areas protected from the adverse health impacts of future development? Where are the

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floodplains and how are they regulated to protect downstream properties and those who use and occupy downstream lands. What happens on ridgelines, slopes, hilltops and in wetlands and habitats? What environmental features most need to be preserved to protect drinking water and prevent flooding? Does the community contain areas that are subject to damage during natural disasters—stormwater, hurricanes, or fires—whose movement and trajectory can be anticipated?

The concept of sustainable development suggests that development should be adequate to meet the needs of the present without compromising the needs of future generations. This suggests, in turn, that some open land needs to be saved for future development. Beyond identifying fragile environmental resources and those that are intricately connected to human health and safety in the near term, the greenprint needs to identify land for future development and some growth management techniques to keep it undeveloped until needed.

4. Include the Greenprint in the Comprehensive Plan

All land use regulations must conform to the comprehensive plan. Before regulating critical environmental lands, it is important to adopt an environmental protection component of the comprehensive plan. In short, the greenprint itself and the measures intended to protect the greenprint must be included in the plan. Many communities adopt an open space or environmental assets map as part of the comprehensive plan. The map can be coded or indexed to indicate the environmental importance of various parcels of land. With respect to high priority lands and parcels within the greenprint, measures need to be identified to prevent or limit future development.

It is here that the local legislature and its citizens advisory committee need to consider what is politically and economically feasible for the greenprint and other critical lands to be preserved. To what extent can zoning and other land use regulations be amended to achieve low impact development, what measures

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are practically enforceable in the community, how much money can be secured for land acquisition, and when is it necessary to work with adjacent communities whose plans and zoning are implicated in accomplishing the community's environmental agenda?

5. Amend Zoning

Zoning districts typically have geometric shapes because their boundaries are often linear roads or property lines. Seldom have such districts been drawn to trace and follow environment functions. If they were, districts would be based on the boundaries of watersheds or other topographical features and would have correspondingly irregular shapes. Once the greenprint and other essential environmental lands have been identified, zoning can be adjusted to conform. The resultant zoning districts would then include all land needed to conserve the critical environmental resources included in the greenprint. One such zone might be a Conservation Residential (CR) zone that includes all land that drains into a local lake or river that serves as a drinking water source or critical aquatic habitat.

Rezoning landowners' properties in this way can be controversial and politically infeasible. The alternative to redrawing underlying zoning district lines is to create zoning overlay districts, such as an Environmental Protection Overlay District (EPOD). These leave existing zoning in place but impose stricter development standards within an overlay zone, which may overlap several existing zoning districts so that the entire greenprint is included. Only the lands that lie within the overlay district are more heavily regulated to achieve the community's environmental goals; lands within the overlay district are subjected to a variety of additional standards that are needed to protect the greenprint from the adverse impacts of land development.

A variety of zoning techniques can be considered in lieu of, or in addition, to overlay zoning. These include, for example, adopting special use permit provisions for land uses that particularly threaten the environment such as dry cleaners or industrial uses, cluster subdivision rules designed to locate development as far away from greenprint lands as possible, and planned unit devel-

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opment zoning which allows adjacent landowners to petition the locality for permission to build a planned community on part of their combined land that does not impact adversely the greenprint.

6. Enact Project Review Standards

In most communities, the local planning board or commission receives development proposals for its review and approval. Its ability to protect the greenprint or other critical environmental lands is limited by the standards contained in local law. When the community has adopted an Environmental Protection Overlay District, then the planning board can apply the stricter standards of the EDOP when proposals for development within the district come before it. Alternatively, the local subdivision and site plan regulations can be amended to include low impact development standards that give planning boards power to condition land use approvals so that such standards are met. A third approach is to make high impact development a specially permitted land use and to subject it to higher standards in the discretion of the planning board. Included in the special use standards are all those necessary to limit the impact of development on the greenprint area or on other environmentally critical parcels.

7. Enforcement

Environmental planning and regulation of this type needs to be supported by a competent enforcement system at the local level. When lands within or near a greenprint area are approved for development, they are conditioned so that the actual building and site work disturb the environment a little as possible. How are these conditions imposed and enforced, both during and after development? Who is responsible and what steps are to be followed to discover and remedy violations? The zoning ordinance typically designates a public official or department as the zoning enforcement officer who is responsible for enforcing zoning standards as well as monitor compliance with the conditions imposed on developments during the approval process.

Thorny details here are important: what conditions are imposed on subdivisions and site plans, how detailed are they, where are they recorded, are they on the filed subdivi-

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sion or site plan plat, are subsequent purchasers on notice of them, who decides that the conditions are not being met, what procedures are to be followed if they are not (both during and after construction), what are the penalties for violating land use conditions, and what is the process for imposing them, including the role of a public attorney as prosecutor? All of these questions must be answered if the community is to have the enforcement capacity it needs to ensure compliance with its newly adopted environmental standards.

8. Work with Landowners and Acquire the Most Sensitive Parcels

Public acquisition of private land is sometimes necessary to achieve the resource preservation and environmental protection objectives of local governments. For a variety of political, resource, and legal reasons, land use and environmental regulation may not be sufficient to protect critical resources and ensure the quality of community life. When this occurs, the public sector has several choices: acquire the sensitive land, convince local landowners to donate their land to the municipality or a land trust, get the local land trust to purchase the land, or its development rights, or work with local landowners on voluntary conservation measures.

Local enabling authority, constitutional considerations, and other legal restraints restrict what a local government can accomplish through regulation. Furthermore, regulation is dependent on government for its implementation and enforcement, and both enforcement capacity as well as the regulations themselves may be altered over time as local political considerations change. More direct control of property is accomplished through governmental — and private — acquisition of property interests in order to assure long-term preservation. Government acquisition and financing techniques, as well as private efforts to preserve land, have become increasingly varied and sophisticated. Local or regional land trusts can be motivated to work with communities that adopt a local environmental law program because of the leverage it adds to the expenditure of their funds and staff resources. In addition, important progress can be made by educating and involving landown-

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ers in voluntary conservation techniques, with our without financial incentives to motivate them.

9. Cooperate with Adjacent Municipalities

Many critical landscapes transcend municipal borders. Development in one locality may impact on environmental conditions in another. Many river and stream tributaries, for example, run through multiple municipalities before terminating in a major river or lake. Downstream communities do not have the practical ability to maintain aquatic life or the quality and quantity of drinking water when upstream localities allow developments that pollute water and diminish flow. They do not possess legal authority, in most cases, to restrict development in legally independent communities upstream.

Few states have authorized regional governments to dictate that communities adopt environmental protection standards to serve greater regional interests. In most states, however, municipalities have been given the legal power to work together to adopt compatible land use plans and regulations. When conducting an open space inventory and identifying a community greenprint, it should become obvious when natural resources are shared with or affected by one or more additional municipalities. Where localities, working in isolation, cannot effectively prevent the erosion of environmental quality because of the external impacts of decisions made in nearby communities, they should enter into an intermunicipal land use compacts to plan, regulate, acquire, and enforce through compatible efforts. If they do this at the beginning of the process of developing an environmental law program, they achieve the reach they need and can affect savings by working together. Two or three communities, for example, can more easily gather data, conduct studies, and plan together; they are more likely also to be able to afford a watershed monitor and code enforcement officer than one municipality can working alone.

10. Leverage State and Federal Resources

Local governments share many interests with state and federal governmental agencies. These agencies are charged with limiting pollution in feder-

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ally impaired waters, protecting the quality of drinking water, managing stormwater, preventing flooding, and protecting wetlands and habitats. In developing and adopting a local environmental law program, each municipality should contact relevant state and federal agencies to determine how to leverage their resources and secure their assistance as they proceed.

State and federal agencies may have relevant data and information regarding local environmental resources and their condition. They may provide Geographical Information Services or other technical assistance useful in conducting a natural resource inventory, drawing the boundaries of the greenprint, and determining priorities. These agencies may have best practice manuals and model laws for localities to consider. They may have funding for planning and projects that will enhance local programming. In many states, federal and state agencies aggressively seek local partners to help with demonstration programs or simply to further their own statutory objectives.

By leveraging energy, expertise, and resources with state and federal agencies, local governments enhance greatly their capacity to meet the multiple challenges of adopting and implementing a competent local environmental law program.

Development and Conservation Planning Go Hand-in-Hand

Smart growth, nearly a household word today, provides a popular label for a growth strategy that addresses current concerns about traffic congestion, disappearing open space, nonpoint source pollution, the high cost of housing, increasing local property taxes, longer commutes, our expanding carbon footprint, and the diminishing quality of community life. To accomplish smart growth, government must take two related actions. The first is the designation of areas for recreation, conservation, and environmental protection. The second is the designation of discrete geographical areas into which private market growth pressures are directed. This reduces a complicated subject to its two most essential features and leaves much for further discussion. This focus also helps to explain why local strategies to protect critical environmental areas

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need to be paired with efforts to encourage growth and development in appropriate areas.

One approach to identifying growth or development areas is to create the greenprint discussed above, which establishes that critical and fragile environmental areas enjoy the highest priority for regulation and acquisition. Appropriate regulation of environmentally sensitive lands should occur before localities and land trusts expend their limited funds to acquire open lands or their development rights.

By identifying critical environmental areas and protecting them by regulations and acquisition programs, communities can better define where to locate the development needed to accommodate population increases. The sustainable development movement taught that development and conservation are mutually supportive. Proper land conservation increases the quality of life, protects needed natural resources, stabilizes property values, and provides recreational and tourism benefits. Proper development, for its part, takes development pressures away from critical environmental areas, provides tax resources for municipal services, and can provide financial resources for land conservation.

Two examples illustrate this point. First, under a transfer of development rights program, development rights on critical environmental lands can be transferred to a receiving area where the community can support higher density development. Because development at higher densities is allowed by law in the receiving area, landowners there are willing to pay for the development rights on the constrained land. Second, localities in some states have been given the authority to adopt incentive zoning: that is to give density bonuses to land developers in defined areas in exchange for public benefits, including cash, provided by those developers. This cash can be deposited into a land acquisition trust fund and used to purchase the title or development rights to environmentally valuable properties. Both these strategies create private sources for financing the acquisition of title to or the development rights of environmentally sensitive land. They demonstrate the reinforcing quality that supporting both development and conservation in appropriate areas can have.

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What is Low Impact Development and How Does Law Fit In?

Scientists encourage planners to pay close attention to matters such as the degree of impervious coverage allowed in watersheds. Pollution from impervious surfaces is the fastest growing threat to drinking water quality for Americans and to the survival of marine and aquatic life in our country. Some studies recommend that impervious surfaces should constitute no more than ten or fifteen percent of the surface area in particular watersheds because above these levels, stream quality declines sharply. Although this is a generality, it helps define low impact development and its planning objectives.

When development in a critical watershed exceeds this ten- to fifteen-percent threshold, the level of environmental degradation in streams, rivers, and other surface waters becomes unacceptable. Runoff of storm water from impervious areas causes thermal shock in water bodies, carries high volumes that cause stream bank erosion, and carries pollutants deposited by motor vehicles and commercial and industrial activity. Higher thresholds (allowing less impervious coverage) are recommended for development around stream headwaters and in environments that are relatively undisturbed. In more urban settings, areas already exceeding the thresholds, additional development has smaller negative consequences.

Local governments regulate and permit development that, in turn, creates impervious coverage: rooftops, driveways, streets, parking lots, and sidewalks. Local land use plans and zoning ordinances determine the layout of streets, the density of neighborhood development, the types of land uses, and the extent of impervious coverage. Low impact development in the most sensitive environmental areas can be achieved by authorizing planning boards to impose conditions on development that limit the amount of impervious coverage. These standards and requirements can include using grassed swales along roads, installing pervious coverage on the roads themselves, requiring green rooftops, drip line or infiltration trenches, drywell and rain garden specifications, preserving vegetative cover, imposing landscaping requirements, prescribing various methods of on-site and off-site detention

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facilities, and specifying a variety of construction management techniques including sediment barriers and limitations on how much soil disturbance is allowed to occur during specified periods.

This is a legal matter because it is through the land use laws of the community that these controls are implemented. These construction and land use standards can be called for in a comprehensive plan, be added to zoning standards, be required in specified districts through overlay zoning, or imposed on developers by planning boards and commissions when they are contained in the legal standards applied to land subdivision, site plan development, or the issuance of special permits.

Illustrations of Low Impact Development Laws

The U.S. Department of Housing and Urban Development (HUD) recommends that low impact development techniques be incorporated into planning for stormwater management, wastewater treatment, circulation, and design.[1] The cities of Chicago, Milwaukee, Portland, and Seattle are among local governments that have established municipal funding for green infrastructure programs.[2] Seattle's stormwater control program is one of the most extensive in the nation. The city's Stormwater Treatment Manual outlines general requirements for stormwater treatment facilities and specific techniques for biofiltration, wetpool filtration, sand and other media filtration, oil control facility design, and landscaping.[3]

Portland's Greenway Overlay Zones[4] ordinance established five separate levels of permitted density and uses along the city's riparian Greenway corridor. Development standards include floor area ratios, setback and landscaping regulations, and the preservation of view corridors and public access to the river. The five distinct zones are: river natural, to protect land of special value for scenic qualities or wildlife habitat; river recreational, which emphasizes public access; river general, which permits uses allowed by the underlying zoning while protecting public access and scenic qualities; river industrial, which permits water-dependent uses but also stresses protection of the river's natural qualities; and river water quality,

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which is intended to limit the impacts of development in the setback area.

As part of its Stormwater Phase II program, New York State has offered local governments a model stormwater ordinance and design manual that incorporate low impact development techniques.[5] Such techniques can also be integrated into traditional regulations for project review. The site plan regulations of the Town of New Windsor, New York, require that stormwater detention basins, retention basins, and water quality ponds incorporate design criteria regarding landscaping, stone channels, slopes, and fences, and that the design result in zero net runoff from the site.[6] The planning board of the Town of Clinton, N.Y. has endorsed model development principles concerning residential streets, parking, and lot development, and conservation of natural areas, all of which involve low-impact techniques.[7]

Transit oriented development (TOD) and town center ordinances are becoming increasingly important local tools for limiting impervious surfaces and other impacts of development and for combating sprawl. The TOD District ordinance of Nashua, New Hampshire, aims to improve pedestrian and vehicular circulation and to provide access to compact mixed-use development that is of sufficient density and intensity to support transit.[8] Charlotte, North Carolina, has adopted a Transit Supportive Overlay ordinance that includes development standards regarding design, minimum densities, buffers, parking and outdoor lighting, and requirements for urban open spaces, as well as an optional overlay that may be requested by an applicant to address ''new development concepts, innovative designs . . . and other unique proposals or circumstances.''[9] The Town Center District ordinance of Mesa, Arizona, combines infill development, pedestrian-oriented design, and landscaping, parking, and screening requirements to integrate compatible residential and commercial uses in a revitalized community core.[10]

The City of Scottsdale, Arizona,[11] the Town of Babylon, New York,[12] and New York City[13] have each adopted green building regulations for municipal or residential projects, incorporating LEED standards and other energy-saving requirements.

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Local Legal Authority and Additional Illustrations of Local Environmental Laws

In most states, it is understood that municipalities have no inherent powers, but can exercise only that authority expressly granted or necessarily implied from, or incident to, the powers expressly granted.[14] Unless the language delegating the power is unambiguous or the legislature's intent to delegate certain powers is clear, doubts are generally resolved against the municipality. Courts vary, from state to state, in how strictly they construe express delegations of power to municipalities. Some find a broader range of implied or incidental powers within the express language used, others do not. It is for this reason that the power to adopt zoning, subdivision, or site plan regulations may not be sufficient in some states to support a broad range of local environmental laws. Finding authority to adopt such laws requires a careful reading of the express language of existing statutes and understanding whether state courts take broad or strict approaches to interpretation.

The invention of local environmental law by local legislatures is illustrated below by reference to discrete laws adopted by local legislative bodies in several states. The following examples demonstrate a logical order, organized as they might be by a local government that wished to adopt a comprehensive program of environmental protection. This section begins with the authority of local governments to establish environmental objectives in their comprehensive plans and illustrates how traditional land use devices — the zoning ordinance, other land use mechanisms, and subdivision and site plan regulations — can be used to protect the environment and natural resources. It then examines local environmental laws that are focused more exclusively on environmental protection, including the requirement of conducting environmental impact reviews, the protection of environmental resources such as aquifers, habitats, floodplains, ridgelines and hilltops, scenic resources, steep slopes, forests and trees, and wetlands and watercourses. Included are local laws that control soil erosion, surface water sedimentation, and stormwater and that permit the transfer of development rights from conservation areas to development areas.

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Comprehensive Planning: If a community wishes to adopt local laws that regulate the environment, it may create a legal basis for those regulations in its comprehensive plan. Since local land use regulations are required in many states to conform to the comprehensive plan, such provisions help sustain environmental regulations when they are challenged.[15] Washington State not only requires that local governments designate critical environmental areas and adopt development regulations to protect those areas; the state also requires that they use the ''best available science'' in adopting their regulations.[16] Local comprehensive plans in New York may identify and provide for the preservation of historic and cultural resources, natural resources, and sensitive environmental areas.[17] In the Town of Clinton, New York, the comprehensive plan establishes a foundation for environmental protection laws by referencing the large number of critical environmental resources that exist in the town. It contains clear strategies for protecting those resources including the use of clustered subdivisions, protection of wetlands, slopes, and wildlife habitat, control of erosion and sedimentation, and the creation of open spaces and green space corridors.[18]

In Delaware, county comprehensive plans must include a ''conservation element for the conservation, use and protection of natural resources in the area and which results in the identification of these resources. At a minimum, this conservation element shall identify and provide for the proper stewardship of wetlands, wood uplands, habitat areas, geological areas, hydrological areas, floodplains, aquifer recharge areas, ocean beaches, soils, and slopes.''[19] The comprehensive plans of counties in Delaware must also consider agricultural uses, silvicultural uses, and watershed protection in their conservation elements.[20] In Florida, conservation elements of comprehensive plans must provide for the conservation, use, and protection of natural resources in the community, including ''wetlands, estuarine marshes, soils, beaches, shores, floodplains, rivers, bays, lakes, forests, fisheries and wildlife, marine habitat.''[21]

Another approach to using the comprehensive plan to achieve environmental protection is found in the Growing

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Smart Legislative Guidebook published by the American Planning Association.[22] It suggests that state planning statutes be amended to require local planning agencies to prepare an ''environmental evaluation'' in which they evaluate the environmental impacts of each element of their comprehensive plans before adoption.

Zoning: Local zoning ordinances in some states contain provisions that directly protect the environment. The zoning ordinance of the Town of Hamden, Connecticut, for example, contains the following language in its purposes clause: ''promoting the health, safety, and general welfare of the community . . . minimizing public and private losses due to flood conditions . . . encouraging the most appropriate use of land throughout the town . . . protecting existing and potential public surface and ground drinking water supplies . . . and encouraging the development of housing opportunities for all citizens of the municipality consistent with soil types, terrain and infrastructure capacity and insuring that proper provisions are made for soil erosion and sediment control.''[23] Long ago, judicial approval of two-acre zoning was based on court's understanding of the public interest in the ''present character, appearance and environment of this rural high-class residential community.''[24] Zoning codes historically contain specific ''nuisance prevention'' provisions such as the elimination of junkyards in environmentally sensitive areas. Zoning may prevent certain nuisance-type uses from locating anywhere in the community. Under this authority, solid waste facilities, manufactures of hazardous substances, certain mining operations, and other high-intensity uses may be prohibited.

A model state zoning enabling statute recommended by the Growing Smart Legislative Guidebook provides for zoning ordinances to regulate development projects that may affect views and scenic resources, drainage and stormwater runoff, soil erosion or sedimentation, the quality of air and water, critical and sensitive areas, and natural hazard areas, including floodplains.[25] Another model statute contained in the Growing Smart Legislative Guidebook authorizes localities to adopt mitigation programs to minimize the adverse

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effects of land uses in critical and sensitive areas identified in a locality's comprehensive plan. This statute gives local land use agencies the authority to require land developers to provide environmental benefits to offset the adverse impacts of their developments on these sensitive environmental areas.[26] To the extent that express language such as this exists in a state's zoning enabling act, local zoning ordinances can contain provisions that aim to protect environmental resources.

One zoning technique that is emerging to protect critical or sensitive environmental areas is the adoption of zoning districts with boundaries that are coterminous with the natural boundaries of such areas. An example of this is found in the zoning ordinance of the Town of Putnam Valley, New York. The zoning ordinance of the town establishes a Preservation District (PD). The ordinance states that its purpose is to ''preserve, protect and enhance the value of natural resources in all respects including topographical and geological features, vegetation, wildlife, watersheds and wetlands, areas of scenic beauty, and other land and community resources whose retention is necessary for the continued maintenance of the quality of the environment and to discourage development on land with ecologically important resources, land subject to flooding, areas with excessive slopes, or other land features that could, if not properly protected, endanger human life or property.''[27]

The extent to which zoning enabling statutes authorize local governments to protect the environment is still being explored in many states. An Ohio court, in *Reese v. Copley Township Board of Trustees*,[28] upheld a municipality's decision to adopt a conservation zoning district finding that it was not arbitrary or unreasonable, but rather was substantially related to promoting the public health, safety, morals, and general welfare of the community.[29] Ohio courts have also upheld zoning regulations designed to protect underground water resources. In *Ketchel v. Bainbridge Township*, the court disagreed with the landowner's claim to have an absolute right to use groundwater without concern for the consequences to neighboring landowners.[30] The zoning provisions limited the development of the land ''in accordance with the ability of such lands to support devel-

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opment without central water supply and/or central sewage disposal facilities, to prevent pollution of such lands and the underlying aquifers by excessive development, and to protect the aquifer recharge areas. ''[31] The court decided that the protection of underground water resources was a legitimate and proper objective of zoning and that an adequate and safe water supply is essential for the public health and welfare.

Overlay Zoning: Overlay zoning is a flexible technique that allows a municipality to limit development in certain environmentally sensitive areas. An overlay zone is a mapped overlay district superimposed on one or more established zoning districts. Environmental overlay district boundaries may be drawn to follow the boundaries of a natural resource, such as a watershed or floodplain. An overlay zone supplements the underlying zoning standards with additional requirements that can be designed to protect the natural features in an important environmental area. A parcel within the overlay zone is regulated simultaneously by two sets of zoning regulations: the underlying zoning district provisions and the overlay zoning requirements. Unique natural or aesthetic resource areas, such as a pine barren, wetland resource area, watershed, or tidal basin can be identified and protected in this way.

The Growing Smart Legislative Guidebook contains a model state enabling act that authorizes local governments to adopt and enforce environmental overlay zones.[32] The model law authorizes localities to adopt Critical and Sensitive Areas Overlay Districts for a variety of purposes, including to ensure the quality of drinking water and water systems, conserve natural resources, prevent contamination of the natural environment, protect wetland resources, and minimize damage from floods, severe storms, and other hazards. The law allows local governments to issue conditional use permits in protected environmental areas and to impose mitigation conditions on specific types of land development that are required to obtain such permits. Mitigation measures may include changes in proposed alterations of the land such as filling, grading, and paving, and the imposition of best management practices, such as minimizing nonpoint source pollution through the use of

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 116

detention ponds, vegetative buffers, and reduced road salting.

The City of Tucson, Arizona, adopted an overlay zoning district that imposes additional regulatory standards on areas prone to periodic washes to protect natural vegetation and sensitive wildlife habitat.[33] The Shawangunk Ridgeline Protection regulations adopted by the Town of Gardiner, New York, are designed to preserve geological features as well as ecosystem functions and habitat of what the ordinance describes as ''one of the most important sites for biodiversity conservation'' in the Northeast.[34] The Town of North Castle, New York, has adopted a Hilltops, Ridgelines, and Steep Slopes ordinance that discourages development on environmentally sensitive slopes, and conditions project approvals on mitigation measures to prevent potential stormwater runoff, erosion, and sedimentation, and on plans for landscaping and revegetation.[35]

Incentive Zoning: Statutes in some states authorize localities to permit developers to build at greater densities than allowed under their zoning district provisions in exchange for public benefits such as the preservation of open space. The Town of LaGrange, New York, for example, awards a 40 percent density bonus when a developer promises to preserve 80 percent of a site for farming purposes.[36] New York state law allows communities to receive cash payments in exchange for zoning incentives awarded to developers.[37] This permits localities to use the cash to provide the public benefit directly. Cash received from a developer for a 20 percent increase in permitted density can be used, for example, to purchase the development rights on other land that it wishes to maintain as open space. Density bonuses of this type are provided to developers who own land in areas where development impacts can be absorbed and serviced. Incentive zoning is one technique municipalities may use to implement their comprehensive plans when those plans identify areas that are appropriate for greater development densities and conservation areas which contain environmentally sensitive lands that should be acquired.

Subdivision Approvals: Subdivision regulations adopted by local legislatures or planning boards can require that environmental features on

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 117

sites to be developed be revealed in maps, plats and drawings submitted for review. Colorado state law authorizes local governments to require subdividers to avoid erosion problems by submitting proper drainage plans to prevent flooding, and also to require them to provide for adequate and convenient open spaces for recreation, light and air, and for the avoidance of congested populations.[38] Subdivision regulations in New York authorize the reviewing body to require developers to change the design or layout of their proposed projects to prevent environmental damage or to preserve natural resources nearby.[39] The subdivision ordinance of the Town of North Salem, New York, requires the planning board to ensure that proposed projects avoid soil erosion, encroachment on watercourses and wetlands, and unnecessary removal of trees and vegetative cover.[40]

State law in Washington provides that subdivision plats shall not be approved unless the responsible local agency finds that ''appropriate provisions are made for . . . open spaces, drainage ways, . . . potable water supplies, sanitary wastes, parks and recreation, playgrounds . . . ''[41] New Jersey's subdivision statute requires that local subdivision ordinances contain requirements for water supply, drainage, shade trees, and ''open space to be set aside for use and benefit of the residents of planned development.''[42] Several states, including New York, provide aggressive authority to local approval boards to require on-site open space or recreational set asides to serve the needs of the occupants of new residential developments.[43]

Site Plan Approvals: The model site plan statute proposed by the Growing Smart Legislative Guidebook[44] specifies that local site plan ordinances shall include standards to preserve natural resources on the site, including topography, vegetation, floodplains, marshes, and watercourses. Some state statutes such as Rhode Island's limit local site plan review to on-site considerations, unless the state statute explicitly permits off site considerations.[45] Connecticut law allows site plans to be modified or disapproved if they fail to comply with the requirements set forth in the zoning ordinance or the local wetlands agency's regulations.[46] Under this Connecticut law, site plans

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 118

are reviewed by the zoning commission, which is required to take the report of the local inland wetlands commission into consideration in making its decision.

A New York state statute allows responsible local agencies to require that all proposed site plans show ''screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the [local legislative body] . . . ''[47] The site plan regulations of the Town of Somers, New York, allow the local planning board to impose conditions on site plan approvals to protect environmental quality and natural resources and features on the site.[48]

Clustering: A Massachusetts statute defines cluster development as ''a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land.''[49] Massachusetts municipalities are authorized to enact zoning ordinances that permit cluster developments upon issuance of a special permit. Where cluster development is permitted, the open land within the development must either be conveyed to the city or town for park or open space use, conveyed to a non-profit organization whose principal purpose is the conservation of open space, or conveyed to a corporation or trust owned by the owners of the lots or residential units within the plot.[50] The City of Fall River, Massachusetts has incorporated these requirements into its local code, specifying that open space shall be either, ''conveyed to a community association . . . conveyed to a non-profit . . . [or] conveyed to the city at no cost.''[51]

In New York, local legislatures are allowed to authorize their planning boards to waive zoning standards such as minimum lot sizes, height requirements, and set backs to ''preserve the natural and scenic qualities of open lands.''[52] The Bedford town board authorized its planning board to require the submission of a cluster plan to preserve ''a unique or significant natural feature of the site, including but not limited to a vegetative feature, wildlife habitat, surface water supply, underground aquifer, endangered species, rock formation,

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 119

and steep slopes'' and to protect ''a unique or significant feature of the man-made environment of the site, including but not limited to a building, structure, or artifact of architectural, historical, or archeological value.''[53] The Town of Stanford, New York, requires residential developments to be clustered to protect agricultural soils, to preserve farming, and maintain its rural way of life.[54]

Aquifer Protection: Using their Municipal Home Rule authority to protect the physical environment, New York communities can adopt aquifer protection laws that restrict nonpoint source pollution resulting from land development and operations that use chemicals that can contaminate water stored in aquifers. The Town of Bedford has adopted an Aquifer Protection Zone to prevent groundwater contamination. Within that zone, a variety of uses are permitted, but only after securing a special permit. Regulated activities include on-site sewage disposal systems, common septic fields, the handling and storage of road salt and deicing materials, and groundwater heat pumps. The Bedford ordinance prohibits some uses in its aquifer protection zone including the disposal of hazardous materials or solid waste, the storage of hazardous materials, dry-cleaning or dyeing establishments, printing and photo processing establishments, and the disposal of septic sludge.[55]

Environmental Impact Review Requirements: In some states, local governments are required to conduct environmental impact reviews regarding the adoption of their comprehensive plans and land use regulations. These states require that the environmental impact of significant land development proposals be reviewed by local agencies under their environmental protection acts. States requiring this separate level of review include California, Hawaii, Massachusetts, Minnesota, New York, and Washington.[56] The California[57] and New York[58] statutes require local land use agencies to consider alternatives to proposed projects and to consider and impose mitigation conditions on proposed developments to protect the environment.

Erosion and Sediment Control: Local laws can be adopted to prevent soil erosion and sedimentation in surface waters caused by land development projects. Undeveloped

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 120

land contains organic particles that are biologically and chemically active which, when disturbed and transported to surface waters, can cause serious water quality problems. One local soil protection ordinance observes that its purpose is ''to safeguard persons, protect property, prevent damage to the environment, and promote the public welfare by guiding, regulating, and controlling the design, use, and maintenance of any development or other activity which disturbs or breaks the surface of soil or results in the movement of earth on land situated in the town.''[59] Erosion and sediment control laws can require that developments reserve buffers along waterways, maintain indigenous vegetation, and not disturb natural contours of the land.

Fish and Wildlife Habitat: Colorado state statutes provide local governments with the authority to adopt local environmental laws that protect wildlife habitat. The purpose of the state's Land Use Enabling Act[60] is to achieve orderly land development within the state in order to maintain a balance between basic human needs of its changing population and ''legitimate environmental concerns.''[61] Specifically the Act empowers local governments ''to plan for and regulate the use of land by . . . [p]rotecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger wildlife species . . . [and by] otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.''[62]

Summit County, Colorado, protects wildlife through a Wildlife Habitat Overlay District that ''seeks to fully protect wildlife habitats . . . from the significant adverse affects of development.''[63] The ordinance requires that all proposals for development within the Habitat Overlay District must include a special wildlife impact report which the State Division of Wildlife is to review. Adding protective provisions to subdivision or site plan regulations or adopting a separate local habitat protection law can achieve habitat conservation for threatened species and maintain biodiversity.

Floodplains: Development activities can destroy floodplains, decrease flood storage,

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 121

increase runoff, and decrease water quality and quantity. Local floodplain regulations can limit the extension of buildings and infrastructure into the flood areas, require that such buildings be built at certain elevations, prevent the obstruction of stream channels, and prohibit the construction of chemical or other hazardous storage facilities.

Irvine, California, adopted a Floodplain District Ordinance for the purpose of promoting the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas.[64] Its floodplain ordinance notes that the flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, and extraordinary public expenditures. The Flood Damage Prevention Overlay District ordinance of the Town of Mendon, New York, contains extensive provisions to protect the environment and public from the dangers of flooding.[65]

Ridgeline Protection: Ridgelines and hilltops are valuable for both their scenic and their ecological qualities. Some ridgeline protection ordinances are designed to accomplish only aesthetic objectives, however, and fail to contain standards that protect the important ecological function that ridgelines serve. Land use regulations that are based on scenic and environmental preservation are more likely to be sustained than those that pursue scenic values alone.[66] The City of Cincinnati's hillside protection ordinance, for example, has been upheld by the courts.[67] The ordinance is designed ''to assist the development of land and structures to be compatible with the environment and to protect the quality of the urban environment in those locations where the characteristics of the environment are of significant public value and are vulnerable to damage by development permitted under conventional zoning and building regulations''[68]

Local laws can require that development on ridgelines and hilltop areas blend with the natural environment and be buffered to preserve particularly valuable viewsheds. The Town of Castle Rock, Colorado, has adopted a ridgeline protection law that allows certain ridgelines and hilltops to be designated for protection and to condition development permits to keep buildings and other structures out of sight in order to

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 122

protect the visual environment.[69]

Scenic Resources: Scenic resources include open views, country roads, panoramic landscapes, tree-lined streets, stone walls, and agricultural scenes. Local efforts to preserve scenic resources include the regulation of road construction and maintenance, land clearing, architecture, and placement of utility lines and signage. Other requirements such as the maintenance of vegetative buffers, street trees, and other vegetation may be included to minimize the impact of development. The Town of Somers, New York, has adopted a local law that contains standards for the designation of scenic resources worthy of protection.[70] The Scenic Resource ordinance of the Town of Blooming Grove, New York, creates five overlay districts, to protect scenic gateways, scenic viewsheds, ridgelines, scenic roads, and surface waters.[71]

Steep Slope Protection: Steep slopes usually are associated with other environmental features such as rock outcrops, shallow soils, bedrock fractures, and groundwater seeps. Excavations or building construction can promote instability by loading the slope and removing vital support. Grading, cutting, and filling can compromise the stability of some slopes. Activities such as agriculture, road and railway construction, house building, and land drainage can be regulated to protect steep slopes. The Town of Cortlandt, New York, has adopted a local law for the purpose of preventing the ''improper disturbance or alteration'' of steep slopes.[72]

Provisions of this kind can also be found in ridgeline or hilltop protection ordinances. The City of Pittsburg has adopted a Landslide-Prone Overlay District to protect against mudslides and other catastrophic movements of earth. Within this LS-O district site development must comply with the hillside development standards contained in City's Subdivision Regulations.[73]

Stormwater Management: Local governments adopt local laws to control the negative impacts of stormwater runoff on the environment and to minimize damage to property and the public health and safety. Stormwater management is the process of controlling and cleansing the excess runoff so it does not harm natural resources or human health. As more land becomes covered

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 123

with impermeable surfaces, such as roads, parking lots, and buildings, there is less surface area available for stormwater to infiltrate. Where storm basins do not exist or are not adequate, stormwater finds its way to the nearest water body. Impervious surfaces such as buildings, roads, and parking areas not only increase the volume and velocity of runoff but also prevent the natural processing of nutrients, sediments, and other contaminants. Regulation of stormwater runoff through stormwater management improves control of floods, reduces erosion and sedimentation, and aids ground water replenishment.

Colorado law permits local governments to adopt regulations limiting development in stormwater channels.[74] The Village of Irvington, New York, has adopted stormwater management and stormwater control ordinances that incorporate recommendations of the NYS Department of Environmental Conservation's model stormwater regulations.[75]

Timber Harvesting Regulation: The regulation of timber harvesting can help maintain an ecological balance while still meeting present and future demands for lumber and pulp. Some factors considered by local harvesting regulations include the successional role of species regeneration, the effect of competing vegetation, and potential damaging agents such as insects and pathogens. The building of access roads, timber products processing centers, and other permanent structures in heavily forested areas are important development matters that may be regulated by timber harvesting laws. The Town of Pawling, New York, has adopted a law that regulates tree clearing and harvesting to prevent sedimentation and drainage problems.[76] In order to shade streams and maintain streambank integrity, the Town of Bristol, New York, prohibits timber harvesting within 15 feet of streambanks and, as part of the harvesting application process, may require a description of best management practices to be used in riparian areas.[77]

Transfer of Development Rights: New York statutes define the Transfer of Development Rights (TDR) as ''the process by which development rights are transferred from one lot, parcel, or area of land in a sending district to another lot, parcel, or area of land in one or more receiving districts.''[78] A

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 124

sending area is an area where land conservation is sought and a *receiving* area is one where development is wanted and can be accommodated. The purpose of a TDR program is to allow communities to develop in a more economical and efficient manner. TDR programs can be used to conserve natural resources, scenic views, and open lands by designating areas containing such resources as sending areas. The Town of Falmouth, Massachusetts has used the TDR approach to protect critical coastal and drinking water supply areas.[79]

A regional comprehensive plan for the Long Island Pine Barrens allocates development credits to land overlying the fragile pine barrens aquifer.[80] Credits are based on the development yield of that land under local zoning. The plan establishes receiving districts into which these development credits may be transferred. Developers who own land in receiving districts may purchase credits from landowners in sending districts. Each purchased credit allows the developer to build one additional housing unit over that permitted by the receiving district's zoning.

Another approach to using TDR is illustrated by Connecticut's ''Right to Farm Statute,'' which pursues the twin objectives of protecting farming and preserving open space. This statute promotes active farming by discouraging development on prime farm lands. The state buys development rights to farmland that the Commissioner of Agriculture deems worth preserving according to statutory criteria designed to contribute to the preservation of agriculture.[81] Municipalities have authority to purchase farmland development rights as well.[82] The purchase of development rights on agricultural land provides cash for farmers: an incentive for them to continue to farm. Connecticut statutes provide an additional inducement to sell agricultural development rights. It provides farmers who have sold their development rights a reduction in real property tax assessments from the appraised value of farm land for uses permitted under local zoning to the land's value as a farm. After the development rights are sold, the land can only be used or sold for farming purposes; this reduced market value, when reflected in reduced tax assessment, lowers the farmer's annual operating expenses for the farm operation making

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 125

farming more viable economically.

Tree Preservation: Tree preservation ordinances typically establish a permit system under which tree removal is allowed, but only upon a showing of necessity, and upon compliance with certain conditions such as the replacement of some or all of the trees to be removed. Provisions of tree preservation ordinances can include consideration of views, setbacks from curbs, sidewalks, and street intersections, pruning, and trimming. A number of state legislatures have adopted statutes that either require or permit local governments to adopt tree preservation laws. These include Georgia,[83] Hawaii,[84] and Maryland.[85]

The Town of Cheshire, Connecticut, has adopted such an ordinance.[86] Some communities have adopted ordinances to protect native tree species, or ''heritage trees,'' such as oak, sycamore, walnut, and eucalyptus which require reports by professional arborists and practices to be followed to preserve such specimens from development activities, including additions to single-family homes.[87] In Steamboat Springs, Colorado, the city has adopted a Trees and Shrubs Ordinance. The purpose of this local law is to prescribe requirements for the protection of plants, including trees, shrubs, lawns, and all other landscaping located, standing, or growing within or upon city property, including any city-owned street, alley, right-of-way, or other public place or city or mountain park, recreation area, or open space. ''[88]

Wetlands and Watercourse Protection: Local wetland regulations restrict activities such as dredging and soil disposal, construction of roads, grading and soil removal, timber harvesting, and placement of buildings and infrastructure on wetlands and their buffer areas. The Town of Lewisboro, New York, has adopted a local wetlands and watercourse law that contains extensive protections for these resources.[89] In Connecticut, state law defines a wetland as an area containing soil types ''designated as poorly drained, very poorly drained, alluvial, and flood plain by the National Cooperative Soils Survey, as may be amended from time to time, of the Soil Conservation Service of the United States Department of Agriculture.'' A watercourse includes any body of

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 126

water, whether natural or artificial, and whether privately or publicly owned.[90]

Connecticut's Inland Wetlands and Watercourses Act requires all municipalities to establish an inland wetlands agency.[91] The agency regulates activities within wetlands designated by the municipalities. A local wetlands agency has the right to regulate not only the land within the established boundaries of a wetland or watercourse, but also any adjacent area where activities might occur that would ''use'' the wetlands in a prohibited manner.[92] The Act prohibits anyone from conducting a ''regulated activity'' on any inland wetland or watercourse without a permit. Regulated activities include almost all development and land use activities. The Commissioner of the State Department of Environmental Protection (DEP) may revoke the authority of the local wetlands agency to regulate activity in the wetlands if it is determined that the local agency has failed to perform its duties.[93] The Commissioner's regulations require that local agencies report to the DEP all permits issued and any other action they have taken.[94] Local wetland agencies are given the authority to adopt regulations that expand on the Commissioner's regulations, or to add to them if necessary to protect the wetlands.[95]

Conclusion

One of the most interesting and frustrating features of the American land use system is its lack of uniformity and predictability. This is interesting because it leads to rapid innovation of the type described in this article. As environmental circumstances become more profound, local laws and regulatory systems can respond by adapting to meet new challenges. The presence of flexible legal authority and the relative lack of constraints in its exercise, allow localities to respond to their unique environmental crises and conditions as they wish, within certain limitations. This is frustrating because it requires developers, professionals, and advocates to discover and understand the unique rules of each provincial jurisdiction as they to propose or oppose local land developments or seek to improve the law or establish new regimes. It creates a fragmentary legal system that defies easy understanding and ready manipulation to meet larger than local interests.

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 127

Recent concerns with global climate change and its worrisome consequences elevate the search for effective and comprehensive solutions to human settlement patterns that cause extensive production of carbon dioxide and other greenhouse gases. How can the impressive trend toward local solutions to environmental problems described above become part of a more comprehensive program of strategy? This article describes a ten step local environmental law program and a suite of local planning, zoning, land use and acquisition techniques that can be adopted by an individual community, or communities that share environmental resources, to address their particular circumstances with the help of state and federal agencies. It is presented as an option for local land use decisionmakers to consider as they develop new and more effective solutions to the problems that they and their constituents cannot avoid.

What if the development and proper functioning of local and intermunicipal environmental laws and programs of the type described here became the explicit objective of state and federal policy? By embracing local action and respecting our country's historical reliance on municipal control in land use matters, higher levels of government can take advantage of local intelligence and commitment to respond to environmental challenges that have state and national consequences. State and federal agencies can provide help, offering data and technology that is difficult for localities to find and afford. They can provide guidance to localities by providing model laws and best management practices for localities to consider. Where necessary, state law can require local land use law to address pressing state concerns, and federal programs can make certain local policies and land use standards prerequisites for eligibility for financial benefits and other assistance.

There is much more to meeting the challenge of climate change than integrating the land use policies and resources of federal, state, and local governments, but building an integrated framework of environmental regulation of this type would create a potent structure to support the more aggressive policies and programs that climate change will almost certainly require.

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 128

[1]*See* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD), THE PRACTICE OF LOW IMPACT DEVELOPMENT (2003).

[2]*See* NATURAL RESOURCES DEFENSE COUNCIL (NRDC), ROOFTOPS TO RIVERS: MUNICIPAL STRATEGIES FOR CONTROLLING STORMWATER AND COMBINED SEWER OVERFLOWS (2006).

[3]*See* CITY OF SEATTLE, WA, STORMWATER TREATMENT TECHNICAL REQUIREMENTS MANUAL (2000). *See also* CITY OF SEATTLE, WA, MUNICIPAL CODE CH. 22.800: STORMWATER, GRADING, AND DRAINAGE.

[4]CITY OF PORTLAND, OR, MUNICIPAL CODE, TITLE 33: PLANNING AND ZONING, CH. 33-440.

[5]The New York State Sample Local Law (2006) is available at http://www.dec.ny.gov/docs/water_pdf/localaw06.pdf.

[6]CODE OF THE TOWN OF NEW WINDSOR, N.Y., CH. 300: ZONING, ART. XIV: SITE PLANS AND SPECIAL PERMITS, § 308-86(A)(5).

[7]*Town of Clinton Recommended Model Development Principles for Protection of Natural Resources in the Hudson River Estuary Watershed: Consensus of Local Site Planning Roundtable (June 2006), available at* http://www.townofclinton.com/pdf/ClintonBSDrev8.pdf.

[8]LAND USE CODE OF THE CITY OF NASHUA, N.H., ART. III, ZONING DIVISION 4, § 16-46.

[9]CITY OF CHARLOTTE, N.C., CODE OF ORDINANCES, APPENDIX A: ZONING, CH. 10: OVERLAY DISTRICTS, PART 9.

[10]CODE OF THE CITY OF MESA, ARIZ., CH. 8 TOWN CENTER ZONING DISTRICTS.

[11]CITY OF SCOTTSDALE, ARIZ., RESOLUTION NO. 6644, adopted March 22, 2005.

[12]CODE OF THE TOWN OF BABYLON, N.Y., CH. 89: BUILDING CONSTRUCTION, ART. VIII, GREEN BUILDING CERTIFICATION, ART. VI, ENERGY STAR REQUIREMENTS.

[13]NEW YORK CITY GREEN BUILDING LAW [Local Law 86 (2005)].

[14]The classic statement of this view, adopted by the courts of many states, is found in DILLON, MUNICIPAL CORPORATIONS, VOL. 1, pp. 448-55 (5th ed. 1911).

[15]*See* N.Y. TOWN LAW § 263; N.Y. VILLAGE LAW § 7-704; N.Y GENERAL CITY LAW § 20 (25) (West 2007). ''The law in many states now also addresses several other land use controls with a focus on their need to relate to a comprehensive plan.'' I RATHKOPF'S THE LAW OF ZONING AND PLANNING, 4TH ED. § 14:1 (2007).

[16]*See* WASH. REV. CODE ANN. § 36.70A.172 (West 2007).

[17]*See* N.Y. TOWN LAW § 272-A (3)(D); N.Y. VILLAGE LAW § 7-722(3)(D); N.Y. GENERAL CITY LAW § 28-A (4)(D) (West 2007).

[18]TOWN OF CLINTON, N.Y. MASTER PLAN: NATURAL RESOURCES §§ 3.1, 3.6, 3.7. 3.9, 8.1, 8.8.

[19]9 DEL. CODE ANN. § 6956(G)(4) (West 2007).

[20]*Id.*

[21]FLA. STAT. ANN. § 163. 3177(6)(D) (West 2007).

[22]AMERICAN PLANNING ASSOCIATION, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE, CH. 12 (2002) [*hereinafter* APA GROWING SMART].

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 129

[23]TOWN OF HAMDEN, CONN., ZONING REGULATIONS, ART. I, § 100.

[24]Elbert v. North Hills, 28 N.Y. S.2d 317 (1941), rev'd, 262 A.D. 856, 28 N.Y.S 2d 172 (2d Dept. 1941), reh'g denied, 262 A.D. 872, 29 N.Y.S. 2d 152 (2d Dept. 1941).

[25]APA GROWING SMART, *supra* n. 22, § 8-201.

[26]*Id.,* § 9-403.

[27]CODE OF THE TOWN OF PUTNAM VALLEY, N.Y., CH. 165: ZONING, § 165-11(A).

[28]Reese v. Copley Township Board of Trustees, 129 Ohio App.3d 9, 716 N.E.2d 1176 (1998).

[29]*Id.* at 14, 1180.

[30]Ketchel v. Bainbridge Township, 52 Ohio St.3d 239, 243, 557 N.E.2d 779, 782 (1990).

[31]*Id.*

[32]APA GROWING SMART, *supra* n. 22, § 9-101.

[33]CITY OF TUCSON, A RIZ., LAND USE CODE, § 2.8.6.

[34]CODE OF THE TOWN OF GARDINER, N.Y., CH. 220: ZONING, § 220-13.1.

[35]CODE OF THE TOWN OF NORTH CASTLE, N.Y., CH. 213: ZONING, § 213-17.

[36]CODE OF THE TOWN OF LAGRANGE, N.Y., CH. 240: ZONING, § 240-31(C).

[37]*See* N.Y. TOWN LAW § 261-B; N.Y. VILLAGE LAW § 7-703; N.Y. GENERAL CITY LAW § 81-D (West 2007).

[38]*See* COLO. REV. STAT. ANN. § 30-28-133 AND § 31-23-214 (West 2007).

[39]*See* N.Y. TOWN LAW §§ 276 -278; N.Y. VILLAGE LAW §§ 7-728-7-730; N.Y. GENERAL CITY LAW §§ 32 - 34, 37 (West 2007).

[40]CODE OF THE TOWN OF NORTH SALEM, N.Y., CH. 200: SUBDIVISION OF LAND, § 200-16.

[41]WASH. REV. CODE ANN. § 58.17. 110 (West 2007).

[42]N.J. STAT. ANN. § 40:55D-38(B)(5) (West 2007).

[43]N.Y. TOWN LAW § 277(4); N.Y. VILLAGE LAW § 7-730(4); N.Y. GENERAL CITY LAW § 33(4) (West 2007).

[44]APA GROWING SMART, *supra* n. 22, § 8-302.

[45]R.I. GEN. LAWS § 45-24-49(B) (West 2007).

[46]CONN. GEN. STAT. ANN., CH. 124: ZONING, § 8-3(G) (West 2007).

[47]N.Y. TOWN LAW § 274-A; N.Y. VILLAGE LAW § 7-725-A(2); N.Y. GENERAL CITY LAW 27-A(2) (West 2007).

[48]CODE OF THE TOWN OF SOMERS, N.Y., CH. 144: SITE PLAN REVIEW, § 144-8.

[49]MASS. GEN. LAWS ANN. 40A § 9 (West 2007).

[50]*Id.*

[51]CODE OF THE CITY OF FALL RIVER, MASS., CH. 86: ZONING, § 86-322.

[52]N.Y. TOWN LAW § 278; N.Y. VILLAGE LAW § 7-738; N.Y. GENERAL CITY LAW § 37 (West 2007).

[53]CODE OF THE TOWN OF BEDFORD, N.Y., CH. 107: SUBDIVISION OF LAND, § 107.50.1.

[54]CODE OF THE TOWN OF STANFORD, N.Y., CH. 164, § 164-19A(1).

[55]CODE OF THE TOWN OF BEDFORD, N.Y., CH. 125: ZONING, § 125-29.4.

[56]CAL. PUB. RES. CODE §§ 21000 ET SEQ. (West 2007); HAW. REV.

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 130

STAT. ANN. § 343 (West 2007); MASS. GEN. LAWS ANN. CH. 30 § 61 (West 2007); MINN. STAT. ANN. CH. 116C (West 2007); N.Y. ENVTL. CONSERV. LAW §§ 8-0101-8-0117 (West 2007); WASH. REV. CODE ANN. § 43.21C.030 (West 2007).

[57]CAL. PUB. RES. CODE § 21002 (West 2007).

[58]N.Y. ENVTL. CONSERV. LAW § 8-0109 (West 2007).

[59]CODE OF THE TOWN OF YORKTOWN, N.Y., CH. 165: EROSION AND SEDIMENT CONTROL, § 165-2B.

[60]COLO. REV. STAT. ANN. §§ 29-20-101 *et seq.* (West 2007).

[61]COLO. REV. STAT. ANN. § 29-20-102 (West 2007). *See* C&M Sand and Gravel v. Board of County Comm'rs, 673 P.2d 1013 (Colo. App. 1983) (§§ 29-20-101 *et seq.* vest broad authority in local governments to regulate land use).

[62]COLO. REV. STAT. ANN. § 29-20-104(1)(B) AND (H) (West 2007).

[63]SUMMIT COUNTY, COLO., LAND USE AND DEVELOPMENT CODE § 4203.01.

[64]ZONING ORDINANCE OF THE CITY OF IRVINE, CALIFORNIA, CH. 5-2: FLOODPLAIN DISTRICT.

[65]CODE OF THE TOWN OF MENDON, N.Y., CH. 200: ZONING, ART. VII, § 200-31 (EPOD 8).

[66]For a review of the ''growing unease with aesthetic-based regulation'' exhibited by certain courts see Michael Allan Wolf, *Euclid at Threescore Years and Ten: Is This the Twilight of Environmental and Land Use Regulation?,* 30 U. RICH. L. REV. 961, 985-989 (1996).

[67]Cash v. Cincinnati Board of Appeals, 117 Ohio App. 3d 319; 690 N.E.2d 593 (1996).

[68]CITY OF CINCINNATI, OHIO, MUNICIPAL CODE § 1459-100.

[69]TOWN OF CASTLE ROCK, COLO., MUNICIPAL CODE, CH. 17: ZONING, § 17.14.

[70]CODE OF THE TOWN OF SOMERS, N.Y. CH. 138: SCENIC RESOURCE PROTECTION.

[71]CODE OF THE TOWN OF BLOOMING GROVE, N.Y. CH. 235: ZONING, § 235-5.

[72]CODE OF THE TOWN OF CORTLANDT, N.Y., CH. 259: STEEP SLOPES, § 1.

[73]CITY OF PITTSBURG, PENN.: LANDSLIDE PRONE OVERLAY DISTRICT § 906.04.

[74]COLO. REV. STAT. ANN. § 30-28-111 (West 2007).

[75]CODE OF THE VILLAGE OF IRVINGTON, N.Y., CH. 183: STORMWATER MANAGEMENT.

[76]TOWN OF PAWLING, N.Y. TIMBER HARVESTING LAW OF THE TOWN OF PAWLING § 45-2, 9.

[77]TOWN OF BRISTOL, N.Y., LOCAL TIMBER HARVESTING LAW.

[78]N.Y. TOWN LAW § 261-A; N.Y. VILLAGE LAW § 7-701; N.Y. GENERAL CITY LAW § 20-F (West 2007).

[79]CODE OF THE TOWN OF FALMOUTH, MASS., CH. 240: ZONING, ART. XXXVI.

[80]CENTRAL PINE BARRENS, COMPREHENSIVE LAND USE PLAN, CH. 6.

[81]CONN. GEN. STAT. ANN. § 22-26CC (West 2007).

[82]CONN. GEN. STAT. ANN. § 7-131Q (West 2007).

[83]GA. CODE ANN. § 12-2-8 (West 2007).

[84]HAW. REV. STAT. ANN. § 58-1 (West 2007).

@DOMINO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/WINT07 SESS: 1 COMP: 11/05/07 PG. POS: 131

[85]MD. CODE ANN., NATURAL RESOURCES, § 5-602 (West 2007).

[86]TOWN OF CHESHIRE, CONN., ZONING REGULATIONS: SECTION 44, PLANNED RESIDENTIAL SUBDIVISION DEVELOPMENT ZONING REGULATIONS, § 10.

[87]*See* Todd S. Purdum, *The (Almost) Untouchables of California*, N.Y. Times, Aug. 29, 2001, at A1.

[88]REVISED MUNICIPAL CODE OF THE CITY OF STEAMBOAT SPRINGS, COLO., CH. 24: TREES AND SHRUBS, § 24-1.

[89]CODE OF THE TOWN OF LEWISBORO, N.Y., CH. 217: WETLANDS AND WATERCOURSES.

[90]CONN. GEN. STAT. ANN. §§ 22A-38(15) AND (16) (West 2007).

[91]CONN. GEN. STAT. ANN. §§ 22A-36 through 22A-45 (West 2007).

[92]Aaron v. Conservation Comm'n of Redding, 441 A.2d 30 (1981).

[93]CONN. GEN. STAT. ANN. § 22A-42(D) (West 2007).

[94]CONN. GEN. STAT. ANN. § 22A-39(M) (West 2007).

[95]CONN. GEN. STAT. ANN. § 22A-39(F) (West 2007).

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